

WRC-15 Agenda Item 1.12

At its eleventh meeting on December 16, 2013, IWG-3 considered an NTIA proposal that supported a primary allocation of an additional 600 MHz to the EESS (active) in the frequency range 9 900 – 10 500 MHz (i.e. document WAC/059. Some concerns were raised at that time by IWG-3 members and it was agreed that the proposal would be re-considered at the next IWG-3 meeting, thereby affording participants time to consider the proposal more fully. At its twelfth meeting on January 13, 2014, IWG-3 received document IWG-3_041, which was a “redlined” version of document WAC /059. Document IWG-3_041 opposed the primary allocation of an additional 600 MHz to the EESS (active) in the frequency range 9 900 – 10 500 MHz. This document instead supported a secondary allocation to the EESS in this frequency range and made the case that a secondary allocation is sufficient to protect EESS operations in this band, given the characteristics of the other services using the band and the necessity to protect the radiolocation service. IWG-3 agreed the proposal contained in document IWG-3/041 for submission to the upcoming WAC meeting and this document was approved at the fifth WAC on January 27, 2014, as document WAC/073. The Commission placed the proposal in approved document WAC/073 on Public Notice on January 28, 2014 (DA 14-88). The Public Notice sought comments on this proposal and set a comment deadline of February 18, 2014. One supportive comment and no opposing or modifying comments were received by the comment deadline.

At its thirteenth meeting on June 11, 2014, IWG-3 received Document IWG-3/041 redline of WAC_059_NTIA proposal 1_12 mimosa June, which was a revised version of the previously agreed IWG-3 markup of the NTIA proposal on this topic. The revised markup was prompted by a petition for Rulemaking that Mimosa filed with the FCC to open up this band for Fixed Service (FS) and called for adding the US to FN 5.480 to indicate that “In Venezuela and the United States, the band 10-10.45 GHz is also allocated to the fixed service on a primary basis along with thirteen other Region 2 countries. Concerns were raised with this markup of the previously agreed IWG-3 proposal on this issue and these concerns were discussed at subsequent meetings of IWG-3. IWG-3 has not been able reach consensus on the issues raised in this proposed revision of the previously agreed IWG-3 proposal and is therefore forwarding two IWG-3 views on this issue to the WAC.

View A

The proposal contained in Document WAC/073, which was approved by the WAC on January 27, 2014, placed on Public Notice on January 28, 2014, and received no negative or modifying comments by the established comment deadline of February 18, 2014, should stand without modification and serve as the basis for initiation of reconciliation discussions with federal agencies.

The proposed revision seeks to modify footnote 5.480 of the Radio Regulations to represent that there is an allocation to the fixed service in the United States at 10 – 10.45 GHz. The plain text of the United States table of allocations and relevant footnotes thereto specifically indicate otherwise. **The proposed modification would cause the United States to make a representation in the Radio Regulations that is simply and indisputably not true.** A pending petition for rulemaking by the proponent of the revision, upon which the Commission has not initiated proposed rulemaking and against which numerous opposing comments were filed, does not and cannot change this simple and indisputable fact. The process of preparing United States proposals for a World Radiocommunication Conference is not a mechanism for bypassing the domestic rulemaking process, and this is precisely what the proponent of the revision seeks to do here.

It is also noted that the consideration of a fixed service allocation, even within a footnote, stretches the scope of agenda item 1.12 and Resolution 26 to the limits of credibility. Adoption of this revision would weaken the credibility with which the United States would rightly seek to resist similar vast expansions of scope of other agenda items at WRC-15.

The relevant portions of the United States table of allocations and footnotes thereto are presented in Appendix 1 to this view.

Appendix 1 to View A—Relevant Segments of United States Table of Allocations and Footnotes Thereto

47 C.F.R. § 2.106

Table of Frequency Allocations

United States Table		FCC Rule Part(s)
Federal Table	Non-Federal Table	
10-10.5 RADIOLOCATION US108 G32	10-10.45 Amateur Radiolocation US108	Private Land Mobile (90) Amateur Radio (97)
	5.479 US128 NG50	
	10.45-10.5 Amateur Amateur-satellite Radiolocation US108	
5.479 US128	US128 NG50	

Footnote US108

In the bands 3300-3500 MHz and 10-10.5 GHz, survey operations, using transmitters with a peak power not to exceed five watts into the antenna, may be authorized for Federal and non-Federal use on a secondary basis to other Federal radiolocation operations.

Footnote US128

In the band 10-10.5 GHz, pulsed emissions are prohibited, except for weather radars on board meteorological satellites in the sub-band 10-10.025 GHz. The amateur service, the amateur-satellite service, and the non-Federal radiolocation service, which shall not cause harmful interference to the Federal radiolocation service, are the only non-Federal services permitted in this band. The non-Federal radiolocation service is limited to survey operations as specified in footnote US108.

Footnote NG50

In the band 10-10.5 GHz, non-Federal stations in the radiolocation service shall not cause harmful interference to the amateur service; and in the sub-band 10.45-10.5 GHz, these stations shall not cause harmful interference to the amateur-satellite service.

View B

Introduction

As part of considering Agenda Item 1.12 calling for a potential allocation to the EESS (active) service in the 10 -10.45 GHz band, Mimosa, the primary proponent of View B, requests that the United States add its name to international footnote **5.480** to avoid prematurely foreclosing consideration by the Federal Communications Commission of the use of this band for fixed services in the 10.000 - 10.450 GHz band.

Background

- **Broadband Benefits of the 10 GHz Band**

Adjusting the International Table of Allocations to make the 10-10.45 GHz band available for fixed services in the United States is in the public interest. It would enable further consideration and possible action by the FCC to support innovative wireless broadband solutions in a band that many consider underutilized. In its Petition for Rulemaking, Mimosa set forth in detail the opportunities offered by the 10 GHz band for the provision of much-needed wireless broadband services.¹ Mimosa's Petition was supported by a wide range of commenters. The 10 GHz spectrum is particularly valuable for increasing broadband availability in rural areas, for both end-user customers and backhaul. For example, this spectrum can offer an important new competitive option for dedicated access facilities (for example, from cell towers to mobile operator switches). Opening up the 10 GHz band for fixed services would also reduce pressure on the increasingly congested 5 GHz band, which is used for both mobile and fixed services.

Allocating the 10 GHz band to fixed services would also give wireless Internet service providers an opportunity to deploy overlay networks in urban and suburban areas currently served only by large incumbent providers. The competition created by such networks would advance the Commission's pro-competitive spectrum allocation policies.

At a time when spectrum for broadband services is limited, and policymakers and industry leaders alike are searching for suitable spectrum, exploring the benefits of the 10 GHz band for fixed services in the United States is in the public interest.

- **Modifying the Footnote in 2015 Provides US Flexibility**

Modifying the footnote at WRC-15 does not prejudice or require the United States to modify its domestic table of allocations; it simply preserves the opportunity for the FCC -- after full consideration of the record in the rulemaking proceeding -- to establish service and technical rules and make a domestic allocation. Moreover, by adding itself to this footnote, the United States would join fourteen

¹ Petition for Rulemaking, Mimosa Networks, Inc., filed May 1, 2013, RM-11715. *See also* Reply of Mimosa Networks, Inc., filed April 25, 2014.

other countries in Region 2 along with all countries in Regions 1 and 3 in having this band allocated to the fixed services on a primary basis internationally.

By contrast, if the US does not add itself to the footnote at WRC-15, it would create unnecessary challenges to updating the international allocation. First, World Radio Conferences are held every four years; as a result, the next opportunity for the US would not be until WRC-19, five years – and a generation of technology – from now. Second, the procedures regarding when a country can modify or delete a footnote will present an on-going obstacle, as explained below.

- **Resolution 26 allows for Modifications to Footnotes**

Resolution 26 (Rev.WRC-07) *“Footnotes to the Table of Frequency Allocations in Article 5 of the Radio Regulations”* provides guidance for countries seeking to modify and/or delete footnotes. It further resolves that any addition of a new footnote or modification to a footnote should be considered by a WRC only under certain conditions, such as when the agenda of that conference explicitly includes the frequency band to which the proposed additional or modified footnote relates. This is the case with the WRC-15 agenda through Agenda Item 1.12 and its consideration of the 10 GHz band.

Since Regions 1, 3 and a majority of Region 2 already have allocated this band to fixed services on a primary basis, it is unlikely that a proposed future stand-alone agenda item on this topic would be approved. Most of the future agenda items are developed through regional organizations and need support from other regions. Since nearly every country in the world has already allocated fixed services to this band, it is highly unrealistic to expect that a future WRC would approve a dedicated agenda item to this topic.

Therefore this upcoming WRC-15 presents an ideal occasion to modify the footnote and preserve the opportunity for US domestic consideration of the use of the 10 GHz band for fixed services. Future opportunities for the US to add itself to the footnote are likely to be very limited.

Opposing Views

The amateur radio operators (ARRL) maintain an objection, primarily on procedural grounds, including the timeliness of the request. These objections are without merit. This request was submitted to IWG-3 in June 2014 -- a full 17 months before the WRC. Further, the footnote would impact the United States primarily, and thus, there is little or no need for CITEL outreach or approval.

ARRL specifically argues that that if the requested international allocation is made, such allocation would be factually incorrect because there is no domestic allocation. This argument is flawed in several ways. First, the language of the current footnote must be read in context. On its face, the footnote states that the 10 GHz band “is ... allocated ...” in the delineated countries. ARRL appears to be arguing that because the US has not allocated the 10 GHz band for fixed services, it would be factually incorrect to state, in essence, that “the band is allocated in the US”. However, the clear meaning of the language in the footnote is that the delineated countries “may allocate” the 10 GHz band for fixed services. To Mimosa’s knowledge, not all of the delineated countries had actually allocated the 10 GHz band to fixed

services prior to adoption of the footnote, and in fact, some countries still have not made such allocation. Second, ARRL's argument presents a chicken and egg scenario: what must come first, the domestic allocation or the international allocation? In fact, in opposing Mimosa's Petition for Rulemaking, ARRL argued that the US cannot allocate the 10 GHz band to fixed services because there is no international allocation.² However in IWG-3, ARRL is arguing that the US cannot add itself to the international allocation because there is no domestic allocation of the 10 GHz band to fixed services.

Should the US ultimately decide not to make a domestic allocation to fixed service in this band, there would be no consequences. Adding the US to the footnote would not place any international requirement on the United States to modify its domestic allocation.

Recommendation

The FCC should support the proposal to add ***'and the United States'*** to footnote 5.480 to provide greater flexibility in the future for the United States to deploy fixed services in support of its broadband objectives.

5.480 Additional allocation: in Argentina, Brazil, Chile, Costa Rica, Cuba, El Salvador, Ecuador, Guatemala, Honduras, Mexico, Paraguay, the Netherlands Antilles, Peru and Uruguay, the band 10-10.45 GHz is also allocated to the fixed and mobile services on a primary basis. In Venezuela ***and the United States***, the band 10-10.45 GHz is also allocated to the fixed service on a primary basis. (WRC-15)

² ARRL Comments, filed April 10, 2014 at 4 ("Mimosa is ... asking the Commission to place the cart a huge distance in front of the horse. The proper route to modify a Region 2 allocation is at a competent ITU World Radiocommunication Conference, not by means of a domestic allocation at variance with both the current international and domestic tables of allocation.")